

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Drewes Farms Partnership,

Plaintiff,

State of Ohio,

Intervenor-Plaintiff,

v.

City of Toledo,

Defendant.

No. 3:19-cv-00434-JZ

The Honorable Jack Zouhary

**Toledoans for Safe Water's Motion
for Leave to File Amicus Curiae
Brief**

**TOLEDOANS FOR SAFE WATER'S MOTION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF**

August 12, 2019

Toledoans for Safe Water, Inc. (TSW), through the undersigned counsel, respectfully moves this Court for an Order permitting it to file an amicus brief to assist the Court while considering Plaintiff Drewes Farms Partnership's ("DFP") and Intervenor State of Ohio's ("the State") Motions for Judgment on the Pleadings. TSW's attached amicus curiae brief describes how the Lake Erie Bill of Rights ("LEBOR") was passed pursuant to the people of Toledo's inherent and inalienable right of local community self-government and describes how corporate constitutional "rights" and preemption violate this right of local community self-government. The City of Toledo did not make this argument in its responses, filed on August 9, 2019. Thus, TSW's amicus brief does not duplicate the City's brief, and provides an additional constitutional law basis for the validity of LEBOR that no party before the Court has provided.

On Tuesday, February 26, 2019, using Ohio's citizen initiative process, citizens in Toledo, Ohio, voted to protect Lake Erie with the Lake Erie Bill of Rights, an amendment to the City of Toledo municipal charter. LEBOR passed with 61 percent of the 15,000 Toledoans who voted in the special election. TSW is the grassroots coalition of local Toledo citizens who ushered the Lake Erie Bill of Rights through Ohio's constitutional citizen initiative process. Coming together after the harmful algae bloom of August 2014, TSW worked tirelessly to pass LEBOR. TSW's efforts included drafting LEBOR, gathering approximately 10,500 signatures to place the initiative on the ballot, and twice defending the initiative in the Ohio Supreme Court. TSW recently incorporated as a nonprofit, with the specific purpose "to educate Toledo and Ohio residents about rights of nature, protecting water and local self-government."¹

After LEBOR was certified, DFP filed suit against the City of Toledo ("the City") seeking an order invalidating LEBOR. The City agreed to a temporary injunction preventing the

¹ Articles of Incorporation available at <https://bizimage.sos.state.oh.us/api/image/pdf/201905902670>.

enforcement of LEBOR. The Court granted the State of Ohio intervention to argue for LEBOR's invalidation. TSW sought to intervene, but the Court denied TSW's intervention and advised: "The Nonprofit may seek leave to file an amicus brief if likely to assist this court." (Order Denying Motion to Intervene, ECF 23 at 5.)

The Federal Rules of Civil Procedure say nothing about amicus curiae briefs. However, federal district courts often allow the filing of amicus curiae briefs. *See Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013); *U.S. v. Mullet*, 868 F. Supp. 2d 618 (N.D. Ohio 2012); *Gratz v. Bollinger*, 122 F. Supp. 2d 811 (E.D. Michigan 2000). Leave to participate as amicus curiae is "within the sound discretion of the courts." *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). "While a would-be intervenor may prefer party status to that of friend-of-court, the fact remains that amici often make useful contributions to litigation." *Stuart v. Huff*, 706 F.3d 345, 255 (4th Cir. 2013).

TSW has been intimately involved in the entire life of LEBOR. Other than the voters of Toledo, no one was more integral to the passage of LEBOR than TSW. And no one can speak to the will of the people of Toledo, as expressed by LEBOR, like TSW can. Amicus TSW, therefore, has a useful contribution to make to this case and has a substantial interest in the Court's resolution of this case. Consequently, this Motion should be granted, and TSW should be permitted to file the attached brief as amicus curiae.

Respectfully submitted this August 12, 2019.

/s/ Terry J. Lodge

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Certificate of Service

I certify that I electronically filed this document with the Clerk of the Court for the United States District Court for the Northern District of Ohio by using the Court's CM/ECF system. The other parties are Filing Users and are served electronically by the Notice of Docket Activity.

Dated: August 12, 2019

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